

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11755 of 2004

Between:

N.Gnanaiah S/o Isaiah, Sravya Co-Operative Urban Bank
Limited R/o Flat No.302, Aziz Towers, Hyderguda, Hyderabad

..... PETITIONER

AND

- 1 The Divisional Co-operative Officer, Golconda Division,
Hyderabad
- 2 The Sravya Co-operative Urban Bank Limited repled., by its
Liquidator, 110, 111, Lingapur House,
Himayatnagar, Hyderabad
- 3 The Andhra Pradesh Co-Operative Tribunal,
Represented by its Registrar, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or Direction (S) essentially in the nature of writ of Mandamus setting aside the proceedings contained in Rc.No.489/2002 E, dt. 20/01/2004 issued by the Respondent no. 1 herein and consequential orders of the Respondent No. 3 Dt. 10/06/2004 in I.A.No.303/2004 in CTA No.55/2004 as bad illegal, arbitrary, unconstitutional and violative of the Principles of Natural

Justice besides being opposed to the process of law and consequently direct the respondent no.1 to conduct de-novo enquiry by following due process of law including adhering to the principles of Natural Justice.

Counsel for the Petitioner: MR.P.V.SANJAY KUMAR

Counsel for the Respondent Nos.1 & 3: GP FOR COOPERATION

Counsel for the Respondent No.2: ----

The Court at the admission stage made the following:

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ORDER:

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Questioning the proceedings vide R.C.No.489/2002 E, dated 20.01.2004, issued by the 1st respondent and the consequential orders passed in I.A.No.303 of 2004 in C.T.A.No.55 of 2004, dated 10.06.2004, the present writ petition is filed.

A show cause notice, dated 05.08.2003, was issued to the writ petitioner for recovery of certain amount by way of surcharge under Section-60 of the A.P. Co-Operative Societies Act, 1964 (for short 'the Act') and also directed him to give an explanation within 15 days from the date of receipt of the said show cause notice. The said show cause notice was received by the writ petitioner on 06.09.2003. The writ petitioner gave a representation, dated 18.09.2003, requesting the concerned authorities to furnish all the documents referred to in the show cause notice to enable him to give a reply to the show cause notice and the same was received by the concerned authority on 18.09.2003. Thereafter, no orders have been passed on the said representation. While so, the impugned proceedings vide R.C.No.489/2002 E dated 20.01.2004, have been passed by the 1st

respondent ordering to recover Rs.10,86,54,317.06 ps together with interest at 18% from the writ petitioner. Questioning the same, the writ petitioner filed C.T.A.No.55 of 2004 before the 3rd respondent and that in I.A.No.303 of 2004 in the said C.T.A., an interim direction was sought for but the said interim direction petition was disposed of directing the writ petitioner to deposit 50% of the disputed amount within one month from the date of the said orders. Questioning the same, the present writ petition is filed.

Sri P.V.Sanjay Kumar, learned counsel appearing for the writ petitioner contended that no opportunity was given to the writ petitioner to give an explanation to the said show cause notice and in spite of the fact that the petitioner gave a representation to the concerned authority to furnish all the documents referred to in the show cause notice, they have not given any documents nor passed any orders on the representation of the petitioner and as such this is a case where the impugned proceedings is issued ignoring the principles of natural justice and therefore, he prays to set-aside the impugned proceedings.

On the other hand, the learned Government Pleader for Co-Operation appearing for the 3rd respondent opposed the same on the ground that the tribunal having considered the entire case passed the impugned proceedings and therefore, the impugned proceedings does not suffer from any legal infirmities. He also contended that the misappropriation is very huge i.e., Rs.10,86,54,317.06ps

It is not in dispute that a show cause notice, dated 05.08.2003, was issued calling upon the writ petitioner to explain as to why the amount of Rs.10,86,54,317-06ps should not be recovered from him by way of surcharge under Section-60 of the Act and also directed that the explanation of the writ petitioner should reach the concerned authority within 15 days from the date of receipt of the show cause notice. It is also not in dispute that the said show cause notice was received by the writ petitioner on 06.09.2003 and that before expiry of 15 days, i.e. on 18.09.2003, the petitioner gave a representation to

the concerned authority to furnish all the documents referred to in the show cause notice to enable him to give an explanation to the said show cause notice. The said representation was received by the concerned authority on 18.09.2003, but no orders have been passed either rejecting his case nor any documents referred to therein were supplied to the writ petitioner. Thereafter, after a lapse of three or four months, the surcharge proceedings under Section-60 of the Act have been passed whereunder it is ordered to recover Rs.10,86,54,317.06ps from the petitioner with interest at the rate of 18%. Questioning the same, the writ petitioner filed C.T.A. and I.A.No.303 of 2004. As seen from the record, it is clear that no reasonable opportunity is given to the writ petitioner to offer his explanation to the said show cause notice. When the petitioner wanted certain documents referred to in the show cause notice, the concerned authorities have not furnished the same nor any explanation is given by them as to why those documents are not necessary for the purpose of giving his explanation. So, it is a case of clear violation of principles of natural justice. Therefore, the impugned proceedings, dated 20.01.2004 is set-aside and the consequential orders passed in I.A.No.303 of 2004 in C.T.A.No.55 of 2004, dated 10.01.2004 are also quashed.

The writ petition is accordingly allowed, directing the respondents to furnish the documents referred to in the show cause notice dated 05.08.2003 to the writ petitioner within a period of one week from the date of receipt of a copy of this order and on such receipt, the petitioner shall have to give an

explanation within two weeks thereafter and the same shall be considered as per law.

(K.C.BHANU, J)

13.07.2004

Note:

Furnish operative

portion of order

by wire.

B/O

Dr/rkk

To

1 The Divisional Co-operative Officer, Golconda Division,
Hyderabad

2 The Sravya Co-operative Urban Bank Limited repled., by its

Liquidator, 110, 111, Lingapur House,
Himayatnagar, Hyderabad

3 The Registrar, Andhra Pradesh Co-Operative Tribunal,
Hyderabad

4 Two CCs to Government Pleader for Co-Operation, High Court of
A.P., High Court Buildings, Hyderabad. (OUT).

5 Two C.D copies.